IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22709 of 2004

Between:

Smt. K. Bala Bai, W/o S.A. Hussain,
(under suspension), Kurnool.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, Rep. by its Principal Secretary, Social Welfare (CV.2) Department, Secretariat, Hyderabad.
2 The District Collector and District Magistrate, Nellore.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more in the nature of Certiorari calling for the records relating to and in connection with the orders passed by the first respondent in Memo No. 10142/CV.2/2004-1, dated 6-12-2004 rejecting the interim stay as against the orders passed by the 2nd respondent in Rc.No. C5(M)4161/93, dated 9-10-2004 cancelling the caste certificate issued in favour of the petitioner and to declare the orders passed by the District Collector in Rc.No. C5(M)4161/93, dated 9-10-2004 is bad in law with all continuity of service, and to pass such other order or orders.

Counsel for the Petitioner:MR.P.V.RAMANA

Counsel for the Respondents: GP FOR SOCIAL WELFARE

The Court made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 22709 of 2004

O R D E R:

Challenging the orders passed by the 1st respondent in Memo No.10142/CV.2/2004-1 dated 6.12.2004 rejecting the interim stay as against the orders passed by the 2nd respondent in Rc.No.C5 (M) 4161/93 dated 9.10.2004 cancelling the caste certificate issued in favour of the petitioner and to declare the orders passed by the District Collector in Rc.No.C5 (M) 4161/93 dated 9.10.2004 as bad in law, the present writ petition is filed.

The Collector and District Magistrate, Nellore by his proceedings dated 9.10.2004 cancelled the social status certificate issued by then M.R.O., Nellore and also ordered for criminal prosecution. Challenging the same, the petitioner filed an appeal before the 1st respondent. Along with the appeal, a stay petition under Section 7(4) of A.P. (SCs, STs & BCs) Regulation of Issue of Community Certificate Act, 1993 (for short, 'the Act'). The said petition was rejected by the 1st respondent. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner vehemently contended that without giving any opportunity to the petitioner the stay petition has been rejected; that the 1st respondent, therefore, violated the principles of natural justice and that the order under challenge does not contain any reasons. Hence he prays to set aside the impugned proceedings. Learned counsel for the petitioner also contended that the 2nd respondent without giving any reasonable opportunity to the petitioner conducted enquiry behind his back and the material which is adverse to the person cannot be relied upon unless the same is made available to the said person. Along with the grounds, several contentions have been raised stating the manner in which the enquiry was conducted.

On the other hand, learned Government Pleader for Social Welfare contended that in the interlocutory application the Government is not supposed to record any reasons for rejecting the stay application and therefore the order under challenge does not suffer from any legal infirmities so as to call for interference. He also contended that in this petition the petitioner cannot be permitted to agitate the manner of conducting enquiry by the 2nd respondent since the same is subject matter in the appeal filed by the petitioner before the 1st respondent and hence he prays to dismiss the writ petition.

A social status certificate was issued by the then M.R.O. Nellore. Afterwards, the District Collector by exercising the powers under Section 5(1) of the Act cancelled the said certificate and ordered for criminal prosecution. Against the orders of the 2nd respondent, admittedly an appeal is filed before the 1st respondent which is a statutory appeal. While filing the appeal, the petitioner filed an application to grant stay of all further proceedings under Section 7(4) of the Act, but the same has been rejected by the impugned proceedings, which reads as follows:

> "A copy of the appeal petition second cited together with its enclosures is communicated herewith to the District Collector, Nellore District. The stay petition filed by the appellant under Section 7(4) of Act 16/93 has been examined by the Government and the same is rejected.
>
> The District Collector, Nellore District is requested to furnish parawise remarks on the appeal petition second cited along with the original connected records in the matter to the Government immediately for disposal (of) the appeal filed before the Government".

From a perusal of the above proceedings it is clear that no opportunity is given to the petitioner to putforward her case. So also,

the order does not contain any reasons of whatsoever for rejecting the stay petition. The 1st respondent ought to have assigned reasons in rejecting the stay application. Quoting the provision of law and rejecting the same cannot be said to be an order. therefore, for the two grounds, namely, that the order does not contain any reasons and that no opportunity is given to putforward the case in the stay application, the order under challenge is liable to be set aside.

However, the learned counsel for the petitioner raised several contentions with regard to the manner of conducting enquiry by the District Collector and also the manner of conducting enquiry by the M.R.O. In my considered opinion, the contentions that were raised in the writ petition are not required to be gone into for the simple reason that the subject matter of the proceedings of the District Collector is under challenge before the 1st respondent. Admittedly, the appeal is pending before the 1st respondent. Therefore, the petitioner cannot be permitted to raise the same issue before this court. No doubt, alternative remedy is not a bar for exercising the jurisdiction of this court especially when there is violation of principles of natural justice, but the petitioner has already availed the statutory remedy of filing an appeal before the 1st re and it is pending. In such view of the matter, entertaining the writ petition to challenge the orders passed by the District Collector dated 9.10.2004 is nothing but usurping the powers of the appellate authority since the appeal is admittedly pending before the 1st respondent. In pursuance of the order passed by the 2nd respondent, the petitioner was placed under suspension on 9.10.2004, pending enquiry. Therefore, at this stage it is not desirable to pass any interim orders since a direction can be given to the 1st respondent to dispose of the appeal filed by the petitioner.

The writ petition is accordingly disposed of setting aside the orders of the 1st respondent in Memo No.10142/CV.2/2004-1 dated 6.12.2004 and directing the 1st respondent to dispose of the

appeal within a period of four months from the date of receipt of a copy of this order. In the circumstances, no costs.

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K.C. Bhanu, J.

Date: --12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The , Principal Secretary,
Social Welfare (CV.2) Department, Secretariat, Government of Andhra Pradesh, Hyderabad.
2 The District Collector and District Magistrate, Nellore.

3. 2CCs to G.P. for Social Welfare, High Court Buildings, Hyderabad (OUT).

2.2CD copies.